

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:)	CASE NO: 18-32106
)	CHAPTER 11
)	
)	Houston, Texas
ERIN ENERGY CORPORATION, ET AL.,)	
)	Thursday, July 12, 2018
)	(2:00 p.m. to 3:10 p.m.)
)	
<u>Debtors.</u>)	

HEARING

BEFORE THE HONORABLE MARVIN ISGUR,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

CONTINUED ON PAGE 2

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Houston, Texas; Thursday, July 12, 2018; 2:00 p.m.

(Call to Order)

(Mr. Rawlins Appearing Telephonically)

THE COURT: All right. We're here in the Erin Energy Corporation case. It is 18-32106. I'll take appearances here in court and then we'll see if we have any additional appearances on the telephone.

MR. OKIN: Good afternoon, your Honor, Matthew Okin on behalf of the Debtors.

THE COURT: Good afternoon, Mr. Okin.

MS. GRAY: Good morning, your Honor, Melanie Gray on behalf of the DIP lender, Greg Holcombe.

THE COURT: Good afternoon, Ms. Gray.

MR. KHARASCH: Good afternoon, your Honor, Ira Kharasch and John Morris of Pachulski Stang on behalf of the Creditors Committee.

THE COURT: Good afternoon, Mr. Kharasch.

MR. FOXMAN: Good afternoon, your Honor, Brad Foxman on behalf of the Public Investment Corporation of South Africa.

THE COURT: Good afternoon, Mr. Foxman.

MR. CORNWELL: Good afternoon, your Honor, John Cornwell on behalf of the Bumi Armada entities.

THE COURT: Good afternoon, Mr. Cornwell.

MR. BECKHAM: Good afternoon, your Honor, Charles Beckham and Martha Wyrick on behalf of Zenith Bank Plc.

1 **THE COURT:** Good afternoon, Mr. Beckham.

2 Mr. Beckham, I read the -- I've read several things
3 from your --

4 **MR. BECKHAM:** Yes, your Honor.

5 **THE COURT:** -- clients but one of them was the notice
6 of their compliance with our order and I just wanted to express
7 the Court's appreciation to their recognition of what had
8 occurred and it was appreciated. So thank you for letting me
9 know that.

10 **MR. BECKHAM:** You're welcome, your Honor. Thank you.

11 **THE COURT:** Thank you. All right.

12 Mr. -- are there any appearances on the phone? If
13 so, you'll need to press "5*." All right.

14 I'll get this other case off the screen.

15 Mr. Okin, go ahead.

16 **MR. OKIN:** Your Honor, as we said in our notice that
17 we filed on Monday, the Debtor does not have the support of the
18 Committee or at this point the DIP lender for a final budget.
19 Given the fact that we do not have support on the final budget
20 and, therefore, no ability to operate this week as it already
21 stands, much less going forward from here, the Debtor's board
22 met and determined that it was in the estate's best interest
23 not to proceed.

24 We've taken the tact since that determination was
25 made to try to act in a manner that minimized both the

1 administrative expenses that were being incurred just naturally
2 as we got up to this point and try not to get involved in any
3 further disputes with the Committee or any other party that
4 would run up any additional administrative expenses leading up
5 to this point. It was, in fact, the litigation expense
6 associated with the fight with the Committee over conversion or
7 not conversion that really brought about this crisis. I
8 believe without that expense, we might have been able to work
9 out a budget with the DIP lender.

10 So given the fact that the DIP lender had made his
11 choice not to agree on a budget and we hadn't convinced the
12 Committee that a Chapter 11 trustee would make more sense,
13 we've attempted to conduct ourselves in a way that as best as
14 possible minimized those expenses. I will point out to the
15 Court that despite that, we have been letting employees, as
16 best we can, know that the Debtor has no budget to go forward.
17 We've had a little trouble getting that message to Nigeria in
18 such a way that we've actually -- I'm not convinced that
19 everybody in Nigeria has actually been let go.

20 And similarly, all of the officers who had been
21 running this Debtor in Houston have stayed on this week
22 assisting with that process despite the fact that there is no
23 money in the budget for this week to pay them and although we
24 have no specific authority to do so, there is money in the bank
25 and regardless of how this hearing goes, I'd ask the Court to

1 look kindly upon them and perhaps as part of the conversion
2 authorize that the excess funds -- no new funds beyond the
3 amount the Court previously authorized but excess funds that
4 were not spent otherwise, that those be approved to be used to
5 pay the officers who did shepherd this through to at least
6 this, you know, somewhat consensual resolution -- not
7 consensual but at least not adversarial.

8 But given that, your Honor, we don't intend to
9 proceed with the DIP loan with a final order. I agree with the
10 DIP lender's view that the interim order provides all the
11 relief that's necessary to get us where we need to be. We
12 don't intend to put on any evidence otherwise and as we said in
13 our notice, we don't intend to put on any evidence opposing the
14 Committee's motion to convert.

15 Given that, I think I'll step aside unless the Court
16 has questions and allow other parties --

17 **THE COURT:** Okay. I have a question for you and
18 maybe for Ms. Gray and maybe this goes to others as well, which
19 is -- and this is something beyond my experience. If you have
20 an interim order that doesn't result in a final order, do we
21 need to enter an order that says the interim order is now final
22 so that we then make it no longer an interlocutory order? Or
23 what do we do so that that order takes on the finality for any
24 appellate purposes? Maybe we do nothing and it becomes final
25 by operation of law? I don't know and I'm hoping somebody else

1 here has run into the problem.

2 **MR. OKIN:** I think your Honor needs to enter an order
3 because I think there is an order for final relief set for
4 hearing today. Regardless of how you rule, whether you rule
5 just denying final relief, I think the interim order does state
6 that even if final relief is not granted, the protection is
7 granted in that order and the carve-out for the Chapter 7
8 trustee are approved.

9 **THE COURT:** Well, it does do all of that but I
10 just --

11 **MR. OKIN:** But I think you need to enter some order
12 today, your Honor.

13 **THE COURT:** And what would you prefer that it say to
14 protect everyone's rights?

15 **MR. OKIN:** I think, all things being equal, I'd
16 prefer it say that the protections and the rights granted in
17 the interim order are now final with nothing -- and no further
18 relief is granted.

19 **THE COURT:** All right.

20 **MR. OKIN:** But I will let other people opine on it.

21 **THE COURT:** Thank you.

22 Why don't we deal with what do we do about the DIP
23 order before we get to the dismissal conversion Chapter 11
24 trustee issue?

25 **MR. OKIN:** Your Honor, and when we get to -- if

1 dismissal is an issue, we do want to be heard on that because
2 we do -- if a conversion is --

3 **THE COURT:** Well, Mr. Beckham has basically filed a
4 cross motion for dismissal. I don't know if he's standing on
5 that or not but I think it's here.

6 **MR. OKIN:** I don't know if it's -- I wasn't clear on
7 whether it was a separate hearing today. I wasn't -- if we're
8 going to consider that, we do want to be heard on that as well,
9 your Honor.

10 **THE COURT:** Yeah. I guess my gut is it's -- it would
11 be kind of a mess to convert it today and set his dismissal
12 motion for Tuesday and then dismiss that and if we need more
13 time to prepare for dismissal, then I would put off the
14 conversion question probably but I'm a little bit -- I don't
15 think this is rocket science to deal with dismissal versus
16 conversion and that we could probably take it up today without
17 a whole lot more notice. But I'm perfectly willing to listen
18 to people that say that they need more time to deal with it but
19 I don't want to do these things piecemeal, I don't think.

20 **MR. OKIN:** We can address the DIP loan first, your
21 Honor. I'll just point out that from the Debtor's perspective
22 and the officers and directors of the Debtor, the parent is a
23 publicly traded company. It's listed in both South Africa and
24 the United States.

25 **THE COURT:** All right.

1 **MR. OKIN:** These officers and directors have duties
2 to parties beyond just a closely held group of shareholders.
3 Dismissal of this case would be something that they would all
4 definitely oppose. It's not something we're prepared to deal
5 with today.

6 **THE COURT:** I'm going to definitely give you a chance
7 to deal with that if -- I don't know whether Mr. Beckham's
8 client is going to push it, not push it. I haven't heard from
9 him but all I'm saying is before we ever get to that, I want to
10 deal with Ms. Gray's client and get their order done
11 appropriately -- and, again, it's an area of the law that I'm
12 not familiar with. I hate to be ignorant about it but I am --
13 on do I do nothing? Do I say the interim is now final?

14 **MR. OKIN:** Okay.

15 **THE COURT:** And so let me hear from others as to what
16 we need to do.

17 **MS. GRAY:** Your Honor, Melanie Gray. And I
18 apologize. I did not announce Justin Rawlins is on the phone
19 for appearances purposes but he is on the line in case the
20 judge may have any questions for him.

21 Your Honor, we have not researched whether the
22 interim order would become final by operation of law. We do
23 not believe that a final order is necessary because of the
24 protections that are already in. With regard to an appeal,
25 given that there will not be any more funding under the

1 existing interim order and DIP note, it seems as if any appeal
2 would be moot because you wouldn't -- there wouldn't be
3 anything to reverse, if you will, by virtue of the protections
4 under 364(e).

5 **THE COURT:** Yeah, I don't want to get into or
6 disagree or agree with that because that will be the Appellate
7 Court's right to decide if it's moot. I just want to --

8 **MS. GRAY:** Absolutely.

9 **THE COURT:** -- I just want to be sure that if I
10 needed -- so you think I can do nothing and your client is
11 fine?

12 **MS. GRAY:** Would be protected. We are -- having said
13 that, your Honor, we are not opposed to a simple order and I
14 think we included a statement to this effect in the filing that
15 we made this morning setting forth the DIP lender's position on
16 conversion that if the Court or the parties believe that an
17 order, you know, deeming or conferring finality (indisc.). We
18 are not opposed to that. We did not come with an order in
19 hand --

20 **THE COURT:** No, I --

21 **MS. GRAY:** -- but we would not be opposed to it.
22 Thank you.

23 **THE COURT:** Thank you.

24 On the phone, let me get the one appearance we have
25 here. Mr. Estefan? Mr. Estefan, did you want to appear?

1 317-296-5991. So we can't hear you. I'm not sure why. Let me
2 be sure we don't have anything muted.

3 **MR. RAWLINS:** Your Honor, I think you did unmute --
4 this is Justin Rawlins of Winston Strawn. If my line's been
5 muted, I don't know -- you know --

6 **THE COURT:** Ah, I'm just -- I've got you listed as
7 Mr. Estefan but that's great. So thank you for the appearance.

8 **MR. BECKHAM:** Your Honor, Charles Beckham on behalf
9 of Zenith Bank. Relative to the DIP order, Ms. Gray and I have
10 been conferring with each other for the last couple of days.
11 You saw, no doubt, that we filed a motion -- or a response to
12 the final DIP, objecting to it on the basis that it appears
13 that from the language in the interim order that the DIP lender
14 intended to -- or maybe not intended to but could potentially
15 prime the first lien of Zenith Bank.

16 **THE COURT:** I think that in her response the very
17 last sentence says, we didn't because we agreed to be
18 subordinate -- somebody that's subordinate to them and,
19 therefore, mathematically we are subordinated to them. It's
20 kind of if A is greater than B, then B is greater than C, then
21 A is greater than C kind of sentence. So --

22 **MR. BECKHAM:** And Ms. Gray have been discussing
23 exactly that point. And she has advised me that her client --
24 she can correct me if I'm wrong here -- did not intend to prime
25 Zenith Bank to the extent that it was senior to Mauritius.

1 **THE COURT:** Right.

2 **MR. BECKHAM:** And I have proposed -- sent over a
3 draft of the order to her this morning and we've been tinkering
4 with the language exactly how to capture that concept. Of
5 course, Zenith Bank believes it has a first lien on everything
6 and -- or substantially all the assets in Nigeria and I think
7 the DIP lender believes that that may be the case but since we
8 weren't here and objecting at the interim phase, they're
9 willing to go as far as we're not trying to prime you with
10 respect to anything that the second lienholder has a valid lien
11 on and I think everybody believes that the collateral package
12 is approximately the same. I don't know that.

13 And -- but we have some -- we have a draft or
14 proposed order. I have a stick. If the Court would like to
15 look to the order, it's very brief. It's only two pages --
16 which attempts to capture the concept that we have and might be
17 helpful to resolve it with the Court.

18 **THE COURT:** Ms. Gray?

19 **MS. GRAY:** David, are you done? I don't want to --

20 **MR. BECKHAM:** No, I'm -- yeah, I'm done.

21 **MS. GRAY:** Great.

22 Thank you, your Honor. Certainly, you know,
23 everybody is agreement to the extent that Mauritius had a --
24 has a second lien on collateral which Zenith also has a lien
25 on. We are junior. However, because it is still unclear at

1 this point whether or not that collateral package is
2 coextensive --

3 **THE COURT:** Right.

4 **MS. GRAY:** -- with each, we do believe we're entitled
5 to the priming that we sought in the motion for approval of the
6 interim and we sought --

7 **THE COURT:** Well, you wouldn't have a problem
8 entering an order that said that you're junior to Zenith to the
9 extent that Mauritius is junior to Zenith?

10 **MS. GRAY:** Not at all. Not at all. And we could do
11 that and wrap it up with a final -- making the interim a final
12 as well and accomplish -- I hate the expression "kill two birds
13 with one stone" because I like birds but, anyway, we could
14 accomplish everything by approaching it that way. Thank you.

15 **THE COURT:** Mr. Foxman.

16 **MR. FOXMAN:** Thank you, your Honor. We just rise to
17 make clear that we don't think that the collateral was
18 coextensive but the way that the Court suggested would work,
19 you know, to-the-extent-type language.

20 **THE COURT:** Okay.

21 **MR. FOXMAN:** We just want to make sure we don't
22 decide one way or the other about who is first on what.

23 **THE COURT:** And I think under the circumstances, the
24 to-the-extent is probably the right way to go. I also think
25 this isn't going to matter but that's a different question.

1 What's the Committee's position?

2 **MR. KHARASCH:** Your Honor, I should -- the
3 Committee's position is that we would prefer -- we'd actually
4 support Zenith Bank on its position that they were not primed
5 at all. I think that was the clear intent of the hearing, that
6 there was no prime and the Court made no finding of adequate
7 protection for such a priming of their lien.

8 Our worry -- the reason why we have a stake in this
9 is that if there is an implied failure of adequate protection
10 for some reason, some collateral that was not coextensive,
11 we've got another super priority claim against the unencumbered
12 assets that we've been trying to, you know, build a wall
13 around. So that would be our worry that, again, if there's
14 some kind of priming, it was that its claim on some asset that
15 PIC does not have a lien on or -- then there could be some kind
16 of potential failure of adequate protection and, again, we're
17 looking at another super -- potential super priority claim.

18 **THE COURT:** But that could only be to the extent of
19 the prime which maxes out at the DIP amount of the loan, right,
20 minus whatever they recover from their other collections?

21 **MR. FOXMAN:** Correct.

22 **THE COURT:** So --

23 **MR. FOXMAN:** Correct.

24 **THE COURT:** Okay. Could I see your stick,
25 Mr. Beckham?

1 **MR. BECKHAM:** Yes, your Honor.

2 **THE COURT:** Ms. Gray, do I need to turn on the
3 join.me so that your partner can watch what we're doing?

4 **MS. GRAY:** No, I think that he trusts me with this
5 much. Thank you, your Honor.

6 **THE COURT:** He's a --

7 **MS. GRAY:** Justin, speak up if you would like to be
8 able to see the revisions. I just know that --

9 **MR. RAWLINS:** I've seen the proposal, your Honor. I
10 don't need to.

11 **THE COURT:** Thank you.

12 **MS. GRAY:** Okay.

13 **MR. BECKHAM:** Your Honor, one comment with respect to
14 the order. The draft that will appear on your screen, the --
15 Ms. Gray and I have discussed the deletion of the first
16 paragraph on the second page.

17 **THE COURT:** Hold on just a minute because I'm not --

18 **MR. BECKHAM:** Okay.

19 **THE COURT:** Let me get it open.

20 **MR. BECKHAM:** All right.

21 **THE COURT:** Here's what's on the stick. Which order
22 do you want me to try and look at? Is it the red-line of the
23 interim?

24 **MR. BECKHAM:** I think it would be helpful for you to
25 look at the DIP order, object -- not the -- I'm sorry -- the

1 order on --

2 **THE COURT:** That one?

3 **MR. BECKHAM:** Yes.

4 **MS. WYRICK:** Your Honor, that's the correct one, the
5 modification.

6 **THE COURT:** I think you're the person who knows,
7 Ms. Wyrick.

8 **MR. BECKHAM:** That is correct, your Honor.

9 **THE COURT:** It cannot be opened because there are
10 problems with the contents.

11 **MS. WYRICK:** Well, I also have the CD, your Honor.
12 Do you have a CD reader?

13 **THE COURT:** Word found unreadable content. Hold on.
14 If I open the red-line, maybe I can get there. Well, that
15 didn't work. Yeah, let's just read it. Oh, this is an insert
16 to the current order?

17 **MR. BECKHAM:** That would be what the insert would
18 read. Actually the order is a separate document which
19 incorporates that language.

20 **THE COURT:** Oh, and that's the one that I couldn't
21 get open.

22 **MR. BECKHAM:** I believe so, your Honor.

23 **THE COURT:** I better take your CD.

24 **MS. WYRICK:** Do you want me to --

25 **THE COURT:** Yeah, I better take the CD. Thank you.

1 **(Pause)**

2 **THE COURT:** Same problem.

3 **MR. BECKHAM:** I do have a hard copy, your Honor.

4 **THE COURT:** Okay. Let me take that. Thank you.

5 **MR. BECKHAM:** And I can also give you the -- a red-
6 line for the language that was changed from the prior order.

7 **THE COURT:** Yeah, let me just take a look.

8 **MS. SPEAKER:** You can also receive it on the stick --

9 **MR. BECKHAM:** Oh, we don't? Okay.

10 Here is the language, your Honor, which is the
11 paragraph that we have proposed changing. But with respect to
12 the draft --

13 **THE COURT:** Is this the same one which is included in
14 what you handed up?

15 **MR. BECKHAM:** Yes, your Honor. The red-line shows
16 the differences from the prior Paragraph 5C of the interim DIP
17 order.

18 **THE COURT:** I think that this is going to get into
19 too many findings that people aren't going to know about today
20 in terms of the validity of your means. Can I take a different
21 stab at it?

22 **MR. BECKHAM:** Yes, your Honor.

23 **THE COURT:** Let me just -- let me see if I can get
24 there and I'm -- I think I can get there in a simpler way but
25 maybe not. The interim order is what ECF number? Does anyone

1 know?

2 **MS. GRAY:** The docket number?

3 **THE COURT:** Correct, the docket number of the interim
4 order.

5 **MS. GRAY:** Your Honor, it's 203.

6 **THE COURT:** Thank you. 203 is a motion.

7 **MR. BECKHAM:** 291 perhaps, your Honor.

8 **THE COURT:** 291? No, that's the interim order, the
9 one that he signed.

10 **MS. GRAY:** Your Honor, it is 247.

11 **MR. BECKHAM:** Oh, okay.

12 **THE COURT:** I got it. Thank you.

13 **MR. BECKHAM:** And, your Honor, to certify the order
14 that we tendered up, the first paragraph on the second page
15 describing the validity of the security interest --

16 **THE COURT:** Right.

17 **MR. BECKHAM:** -- we are willing to take that out.

18 **THE COURT:** Oh, okay.

19 **MR. BECKHAM:** That may help you. We weren't trying
20 to take advantage. So the operative paragraphs would be that
21 first paragraph on Page 1 of the order, the second one
22 providing that you entered the interim order and then the third
23 one which has the red-line language relative to --

24 **THE COURT:** Okay. Does that work for you, Ms. Gray,
25 if we take out the first paragraph on Page 2 and then leave in

1 the red-line changes?

2 **MS. GRAY:** Your Honor, it doesn't because there is a
3 possibility that there is collateral in which Zenith holds the
4 first lien and Mauritius does not have a second lien.

5 **THE COURT:** So if I add right before the semicolon
6 that's on the sixth-from-the-last line, "but only to the extent
7 that such liens are senior to the liens held by" --

8 **MS. GRAY:** MCB --

9 **THE COURT:** MCB?

10 **MS. GRAY:** Yeah, whatever the defined term is.

11 **THE COURT:** Does that then work?

12 **MS. GRAY:** We believe it does. However, I do think
13 that then that is somewhat inconsistent with the first ordered
14 paragraph on Page 1 that we did not intend to prime. We came
15 in intending to prime everyone. PIC, of course, objected
16 and --

17 **THE COURT:** I think we just -- so if we take out the
18 last paragraph on the first page --

19 **MS. GRAY:** Uh-huh.

20 **THE COURT:** -- the first paragraph on the second page
21 and then you handwrite in language that clarifies that the
22 definition of the Zenith liens are only Zenith liens on which
23 Mauritius has a junior lien -- or property on which Mauritius
24 has a junior lien, then you're okay with it, right?

25 **MS. GRAY:** That is correct, your Honor.

1 **THE COURT:** And that works for your client?

2 **MR. BECKHAM:** Your Honor, unfortunately I wasn't here
3 for the interim hearing and no objection was lodged by Zenith
4 Bank. And while I cannot concede to and agree that we should
5 be subordinated because of a lack of adequate protection,
6 Zenith Bank does want the benefit of an order being entered.
7 So I think this is a suitable way of addressing the issue.

8 **THE COURT:** I'm not asking you to agree to this --

9 **MR. BECKHAM:** Okay.

10 **THE COURT:** -- for the reasons that you've stated --

11 **MR. BECKHAM:** Right.

12 **THE COURT:** -- but we've already done what we've done
13 and I'm not going to go back and change what I did.

14 **MR. BECKHAM:** I understand that.

15 **THE COURT:** So to the extent that Zenith wants me to
16 change what I did, that's overruled. Given that it's
17 overruled, now what would Zenith like me to do?

18 **MR. BECKHAM:** I think the language works, your Honor.

19 **THE COURT:** Thank you.

20 Yeah, Mr. Foxman?

21 **MR. FOXMAN:** Your Honor, I think that works also but
22 we'd just like to take a look at it maybe on the projector is
23 that's okay or if you could just say it one more time before
24 it's entered.

25 **THE COURT:** Well, what I'm going to do is I'm going

1 to hand it out and let somebody else handwrite in the precise
2 language and you can look over their shoulder. Unfortunately,
3 because it's not coming up on either one of the pieces of
4 electronic media, I don't have that ability but you-all can
5 just handwrite it in.

6 **MR. FOXMAN:** Okay. Thank you, your Honor.

7 **THE COURT:** Did you have a --

8 **MS. WYRICK:** Your Honor, I do have a version on my
9 computer. I'm more than happy to re-save it and see if that
10 works.

11 **THE COURT:** That's -- if you have it on your
12 computer --

13 **MS. WYRICK:** Yes, sir.

14 **THE COURT:** -- is your computer plugged in?

15 **MS. WYRICK:** Yeah, I've got it up right now.

16 **THE COURT:** No, is it plugged into our system?

17 **MS. WYRICK:** Oh, I've never done that but I can try.

18 **THE COURT:** There's a little device in that little
19 door right in front of the monitor.

20 **MS. WYRICK:** Okay.

21 **THE COURT:** I think it's in front of the monitor. On
22 Mr. Beckham's side of the monitor is where I'm thinking the
23 little door is.

24 **MS. WYRICK:** Here? Thanks.

25 **THE COURT:** I think there should be a little device

1 to plug into. If not, there's one out of this front door.

2 Right, that's the one.

3 **MR. OKIN:** Is it this one, your Honor?

4 **THE COURT:** Is it a --

5 **MR. OKIN:** It's an HDMI.

6 **THE COURT:** It'll work. Either one will work. Do
7 you have an HDMI plug?

8 **MR. OKIN:** Yeah, she does.

9 **MS. WYRICK:** Thank you.

10 **THE COURT:** There you go. So what I want to do is
11 take out the last paragraph on the first page. This is the
12 part that I'm ordering as opposed to your client agreeing to.
13 So that has to be deleted. And then I want to take out that
14 paragraph that you're now pointing at. I want to go back to
15 the title and I wanted to make it "Final Order." Okay. And
16 then go down to the single-spaced paragraph and on the seventh-
17 from-the-last-line, there's a semicolon and right before that
18 -- right before it's -- up, up, up, two more lines up. Right
19 there. Right before that semicolon --

20 **MS. WYRICK:** Okay.

21 **THE COURT:** Can you go back to the -- right before
22 the semicolon, not right after it. Yes, comma, "But only to
23 the extent that the assets on which Zenith holds
24 liens and security interests are also subject to
25 liens and security interests held by the MCB facility

1 parties." That's what I'm intending. If that
2 doesn't work, people can object to it but I'm just trying to
3 cut through and get this done easily.

4 So given that I'm overruling your client's objection
5 to part of it, I'm going to allow the bank fully to participate
6 in the part that I'm not overruling. Any objection?

7 **MR. BECKHAM:** No, your Honor. I think that language
8 works.

9 **THE COURT:** Ms. Gray?

10 **MS. GRAY:** No objection, your Honor.

11 **THE COURT:** Mr. Foxman?

12 **MR. FOXMAN:** No objection, your Honor.

13 **THE COURT:** And the Committee?

14 **MR. KHARASCH:** No objection.

15 **THE COURT:** Thank you.

16 So I think what I'll do is give you back your flash
17 drive because you can't print from there, unfortunately. I'll
18 get you to save that maybe as a PDF on the flash drive and then
19 we'll print it from there.

20 **MS. WYRICK:** Yes, sir.

21 **THE COURT:** Thank you. All right.

22 Okay. So now let's go towards dismissal and
23 conversion and Chapter 11 trusteeing issue. Is there anyone
24 that currently is advocating the appointment of a Chapter 11
25 trustee? I know the Debtor had indicated a preference but that

1 was before Ms. Gray's client said they wouldn't fund the
2 Chapter 11 trustee and I didn't know if you still wanted to
3 advocate for that or not.

4 **MR. OKIN:** Your Honor, we've agreed not to advocate
5 for it. We will -- and I've been instructed by the Debtor's
6 board to just once again inform the Court that the board
7 believes that the assets, especially the assets in Nigeria but
8 also in Gambia, will lose substantial value from the conversion
9 of this case to Chapter 7 and that were there a way to fund the
10 Chapter 11, that a Chapter 11 trustee would be far preferable
11 to a Chapter 7. Given the lack of funding for it, we're not
12 going to waste court time or funds litigating that issue but we
13 do want to be sure the Court is aware that that's the Debtor's
14 management's position.

15 **THE COURT:** In as much as there would be no money for
16 a Chapter 11 trustee to operate with, to the extent that that
17 is a good suggestion in the absence of that fact, I will
18 overrule any effort to appoint a Chapter 11 trustee provided
19 that I am not tying the hands of the Chapter 7 trustee. If the
20 Chapter 7 trustee believes it's appropriate to come into court
21 and ask to do temporary operations or other things for which
22 emergency relief is appropriate, the Chapter 7 trustee would be
23 authorized to do that and to the extent that we dismiss the
24 case and a new Chapter 11 case is filed, I would not dismiss
25 with prejudice.

1 So in either event, if money comes in that would fund
2 that and if that's appropriate, I would allow either the
3 Chapter 7 trustee or the Debtor -- or the former Debtor to seek
4 that relief as appropriate. So I'm going to -- that means
5 we're now limited to the question of conversion to 7 or
6 dismissal of the case.

7 I don't know how you-all want to proceed with that.
8 I probably -- I want to express maybe to Mr. Beckham one
9 concern that I have about dismissal that came up early in the
10 case and I don't know whether these allegations are
11 meritorious. But early in the case, there was an issue of
12 whether the M&M -- the D&O policy -- excuse me -- was in
13 existence and needed funding and at that point, there was some
14 indication that there was a large D&O policy that might be
15 available.

16 And so I start the hearing thinking that I would want
17 a Chapter 7 trustee to be able to figure that answer out and
18 that dismissal would eliminate the ability to figure that
19 answer out --

20 **MR. OKIN:** Your --

21 **THE COURT:** -- but that's some bias I start the
22 hearing with. Beyond that, I don't know.

23 **MR. OKIN:** And, your Honor, if I could address that
24 because we did have new developments as of today.

25 **THE COURT:** Okay.

1 **MR. OKIN:** I received an email from Michael
2 Durrschmidt, who represents our insurance broker, forwarding on
3 an email from AIG informing us that they had decided due to
4 lack of payment to terminate the policy. Now, we've done this
5 throughout the case where both AIG -- and I forget the other
6 carrier -- have periodically attempted to cancel for failure to
7 pay. We've informed them we're in bankruptcy and they have
8 generally backed off but there are notices of cancellation that
9 have been sent and withdrawn and now another one that has been
10 sent and I do believe that dismissal of the case would result
11 in the cancellation of that policy which I believe is \$30
12 million between all three policies.

13 **THE COURT:** And has a demand been made?

14 **MR. OKIN:** Well, a demand was made. There is one
15 pending D&O lawsuit that was actually filed in Delaware
16 Chancery court. It was dismissed. That dismissal is on appeal
17 and has been stayed --

18 **THE COURT:** Okay.

19 **MR. OKIN:** -- due to the filing of this bankruptcy
20 case. Demand was, I believe, made on the policies back at the
21 time that lawsuit was filed. I don't believe termination of
22 these policies would directly affect coverage under that
23 particular claim although I certainly am not an expert on that
24 issue.

25 **THE COURT:** Okay.

1 **MR. OKIN:** Really the issue of retaining the policies
2 would go towards any other claims that have not been asserted.
3 I believe the claims that were asserted that are subject to
4 this dismissal motion or its appeal --

5 **THE COURT:** Right.

6 **MR. OKIN:** -- are outside most of applicable statute
7 of limitations.

8 **THE COURT:** Okay.

9 **MR. OKIN:** So I don't believe those claims are really
10 relevant to the issue but there are no other -- there have been
11 no other demands made on the policy and the policy would
12 terminate and it is a claims-made policy. It would relate back
13 to -- it would eliminate any coverage for any events --

14 **THE COURT:** Right.

15 **MR. OKIN:** -- that have not already been asserted.

16 **THE COURT:** So I just -- so, Mr. Beckham, I start to
17 hearing what sort of that concern of if I dismiss that the
18 general creditors of the estate are never going to see that
19 money and I need you to tell me how I get over that sort of
20 initial concern from some history in the case that you weren't
21 even here for and I know that.

22 **MR. BECKHAM:** Thank you, your Honor. I think I may
23 have a solution --

24 **THE COURT:** All right.

25 **MR. BECKHAM:** -- to that problem and it goes to

1 whether or not -- and obviously we filed a motion to dismiss
2 all of the cases. The case that Zenith Bank is most concerned
3 with is the Erin Petroleum Nigeria Limited because that is the
4 borrower -- Zenith's borrower and that is the owner of the oil
5 and gas assets in Nigeria.

6 The -- I think that perhaps a solution for the Court
7 to consider would be to dismiss the Erin Petroleum Nigeria
8 Limited case, EP&L, but convert the parent case and the other
9 cases because I don't -- I've never reviewed the D&O policies
10 but I assume that the D&O policies are at the parent level
11 which is the public company which would be the most important
12 party to perhaps stay in bankruptcy and give a Chapter 7
13 trustee an opportunity to pursue those claims but I don't know
14 that --

15 **THE COURT:** Well, if we're going to convert
16 everything else, that sort of takes away sort of the
17 schizophrenia that I was worried about at the beginning of the
18 hearing. Should I convert everything without prejudice to then
19 a hearing on your motion to dismiss the Nigeria case after we
20 can get a Chapter 7 trustee up to speed to see if there's
21 anything there anyway?

22 And I'll give you a hearing now that I'll bind that
23 Chapter 7 trustee to and we'll do that in maybe three weeks
24 because I wouldn't let it go for long because it's a fair
25 argument that we ought to be taking them out differently but

1 without, I think, some appropriate study of the D&O policy to
2 see what effect that would have and maybe even getting a
3 Chapter 7 trustee to argue that he can recover value out of
4 Nigeria but he doesn't have much money to do that with, to be
5 real about it.

6 What do you think of that kind of a concept?

7 **MR. BECKHAM:** I think that would be satisfactory,
8 your Honor.

9 **THE COURT:** Let me hear from, really I guess, the
10 Committee then about converting everything but without
11 prejudice to a dismissal motion to be heard in roughly 21 days.
12 You know, we'll need to look at everybody's calendar about
13 something like that.

14 **MR. KHARASCH:** Well, your Honor, obviously their
15 rights to file a motion to dismiss are what they are. They can
16 always have a right to file a motion to dismiss even if you
17 convert the case, right. You don't have to grant the motion.
18 What worries me is that the reality is what -- by the time a
19 Chapter 7 trustee gets named, appointed, no-parachutes down to
20 this case, reads the pleadings, you know, that 21 days in the
21 objection period is just not going to be enough for that
22 trustee to get up to speed, to realistically -- and I think
23 what's just going to happen is he's going to oppose it on the
24 -- and will say he needs more time.

25 I think if you're -- if we're going to set a hearing

1 date on that, I would hope your Honor -- it would be more like
2 45 days out to realistically give the trustee time. I mean,
3 just -- I mean, to me, the whole idea of Zenith's position is
4 preposterous that, you know, an entity's first secured lender
5 that's probably fully secured has sat on the sidelines in this
6 -- well, actually they haven't sat on the sidelines. They've
7 done everything they can to avoid this Court's rulings. They
8 refuse to even protect their own interest on the grounds the
9 Court had no jurisdiction and then filed for a receiver in
10 Africa and were found in contempt by this Court.

11 And now they come back to tell us what's in the best
12 interest of the estate and all our constituents. Your Honor,
13 we fought, you know, tooth and nail to protect the unencumbered
14 assets in this case and finally get a Chapter 7 trustee to look
15 at them, prosecute them, analyze them. We now have a fund of
16 \$458,000 available -- a war chest.

17 **THE COURT:** So let me just ask you this. If I set a
18 21-day status conference with a 45-day evidentiary hearing,
19 you'd be okay?

20 **MR. KHARASCH:** Absolutely.

21 **THE COURT:** Let me see if Mr. Beckham is okay with
22 that.

23 **MR. BECKHAM:** That would be satisfactory, your Honor.

24 **THE COURT:** Okay. Can I ask the United States
25 Trustee whether you've already made a determination of whether

1 you're going to do a panel trustee or a special appointment in
2 this case? For the record, I have a long history of not
3 telling them what to do. This is totally informational so that
4 we know we're going and I'm not going to give you any input on
5 what's the best thing to do.

6 **MS. LIVINGSTONE:** Your Honor, Diane Livingstone for
7 the United States Trustee. We would go to the panel for the
8 appointment and that can be done as soon as an order is
9 entered. We can do that today. However, I do know and have
10 been told that there are several panel trustees whose law firms
11 are involved in the case and if I get too many trustees who
12 can't serve and the rotation is just not providing us with a
13 trustee that doesn't have conflicts, I may make a special
14 appointment just to avoid -- you know, just to ensure that a
15 trustee is appointed without conflicts. So one thing --

16 **THE COURT:** So what I would --

17 **MS. LIVINGSTONE:** -- I may do is send out the case to
18 the Chapter 7 trustees and have them tell me ASAP whether or
19 not they have a conflict and it will at least narrow it down.

20 **THE COURT:** When would the election be if we wanted
21 you to -- if an election is going to occur --

22 **MS. LIVINGSTONE:** Yes.

23 **THE COURT:** -- what would be the earliest date on
24 which that could occur so we don't have an interruption in the
25 consistency of who the trustee is because I suspect this is a

1 case where you might get an election?

2 **MS. LIVINGSTONE:** Right. That's right. Well, the
3 notice of the 341 meeting, the first would -- there has to be
4 21 days' notice but not more than 40. So we'd be looking at at
5 least 21 days before the first meeting is set and the election
6 has to be held at the first meeting.

7 **THE COURT:** Okay.

8 **MS. LIVINGSTONE:** It could -- so it --

9 **THE COURT:** Are you allowed -- I know under 11 you're
10 allowed to confer with the parties over who a trustee ought to
11 be. Are you allowed to do that in a 7 or that's simply
12 prohibited, you can't even confer if you want to?

13 **MS. LIVINGSTONE:** No. In a Chapter 7, we go to a
14 wide rotation --

15 **THE COURT:** Right.

16 **MS. LIVINGSTONE:** -- unless there are -- for example,
17 because there's multiple cases, once one case has a trustee --

18 **THE COURT:** Right.

19 **MS. LIVINGSTONE:** -- we're going to appoint the same
20 trustee or at least get the same trustee but we don't consult
21 with the parties.

22 **THE COURT:** Even if you decide that your panel can't
23 do it because it's too limited?

24 **MS. LIVINGSTONE:** Well, if there's too -- I mean, if
25 there's no one on the panel that can't -- that cannot do it --

1 **THE COURT:** Right.

2 **MS. LIVINGSTONE:** -- then -- which we've never
3 actually had that situation.

4 **THE COURT:** I don't mean there's no one. I think
5 you've said though that if the panel got small enough, you
6 wouldn't be --

7 **MS. LIVINGSTONE:** If the panel got small enough,
8 then --

9 **THE COURT:** Could you then confer or would you be --
10 and, again, I'm not --

11 **MS. LIVINGSTONE:** I think I would still try to go
12 random -- a random selection but --

13 **THE COURT:** Okay.

14 **MS. LIVINGSTONE:** -- I just -- it just depends. I
15 mean, I know that there's at least three trustees on the panel
16 that -- currently that I know of that have -- that would have
17 conflicts. So -- but we don't necessarily confer. We just --
18 and like I said, normally we'll --

19 **THE COURT:** Okay.

20 **MS. LIVINGSTONE:** -- try to go through the process of
21 finding a trustee without a conflict in as random a manner as
22 we can.

23 **THE COURT:** Okay.

24 **MS. LIVINGSTONE:** But --

25 **THE COURT:** I got it. I really just wanted the

1 information. I think you've given it to me and I hope you
2 don't take anything I've said as any sort of preference or the
3 way that you go about things. I just --

4 **MS. LIVINGSTONE:** No.

5 **THE COURT:** -- wanted to know what the options that
6 you were confronting were. Thank you.

7 **MS. LIVINGSTONE:** Uh-huh.

8 **THE COURT:** All right. So on September -- excuse me
9 -- August the 6th at 9:30 in the morning, we will have a status
10 conference and preliminary hearing on the motion to dismiss as
11 to the Nigerian Debtor only. And can I get that case number SO
12 we can counter it only in the one case?

13 **MS. WYRICK:** Your Honor, the case number is 18-32109.

14 **THE COURT:** I'm sorry, 18 --

15 **MS. WYRICK:** 32109.

16 **THE COURT:** Okay. So that preliminary hearing and
17 status conference on the motion to dismiss will apply only in
18 Case 18-32109 and not the other cases. And then on September
19 the 5th at 9:00 o'clock in the morning, we will have an
20 evidentiary hearing on whether to dismiss Case 18-32109. And
21 at those hearings, they will be without prejudice to the
22 decision that we've made today to convert the cases on the
23 grounds that I have not considered in those cases whether
24 dismissal is a superior alternative to conversion. I am going
25 to defer that consideration until the 5th of September and I

1 don't want anything we're doing today to be thrown back in my
2 face or Mr. Beckham's face as to what's the best thing to do at
3 that hearing.

4 Any objection to those dates? Anybody on vacation?
5 I've got plenty of time around there. I just tried to live
6 with basically the 21 and 45 days that people had talked about.

7 **MR. BECKHAM:** Your Honor, that works for Zenith Bank.

8 **THE COURT:** Okay. And then do we have a form of
9 order that converts that you-all want to use or do you just
10 want a one-sentence order that says these cases are all
11 converted to cases under Chapter 7?

12 **MR. KHARASCH:** Your Honor, we weren't sure whether
13 the U.S. Trustee wanted special language. We've seen other
14 jurisdictions where the U.S. Trustees would like certain
15 language to clean up some of the Chapter 11 stuff. What --
16 maybe what the best thing to do is we have a proposed order.
17 If we can circulate it among the parties and try to get
18 everybody to sign off and file it in the morning. If that
19 makes sense or a one-sentence order is fine depending on --

20 **THE COURT:** Well, let me ask whether this causes any
21 injury to anybody, is me doing a one-sentence order and if the
22 parties decide they need more, then you-all are free to upload
23 a proposed amended order but that way, she can start appointing
24 the trustee --

25 **MR. KHARASCH:** That makes sense.

1 **THE COURT:** -- this afternoon and I don't want there
2 to be delay.

3 **MR. KHARASCH:** We prefer that, your Honor.

4 **MR. OKIN:** Your Honor, would it be possible -- I
5 mentioned it in the beginning. We do have money that hasn't
6 been spent under the old budget. Is it possible to get
7 authority to pay some of the outstanding wages or pay people
8 for the work that they did this week out of those funds,
9 especially given the fact that the Chapter 7 trustee has a
10 carve-out --

11 **THE COURT:** Was that already authorized in the order?

12 **MR. OKIN:** Unfortunately, no, your Honor. As you may
13 remember, the hearing in Nigeria was set for last Friday.

14 **THE COURT:** Right.

15 **MR. OKIN:** And we agreed to fund the budget through
16 the end of last week. We agreed to postpone this hearing a few
17 days in order to give ourselves the opportunity to go -- defer
18 some of the litigation costs until we saw what happened on
19 Friday which, as it turned out, was a good move because we did
20 save substantial funds and not --

21 **THE COURT:** How much money are you needing?

22 **MR. OKIN:** Well, we only have so much. So it's
23 really not an issue of how much. I'd have to actually --

24 **THE COURT:** How about -- why don't you see how much
25 we're talking about and let's see what we hear from people?

1 Thank you.

2 **MR. OKIN:** Your Honor, it would -- your Honor, it
3 would be about 75 to \$80,000. It's basically the remaining
4 employees' salaries through the 15th which is essentially this
5 weekend. It's through Friday -- tomorrow. That's how the
6 payrolls are calculated. We were basically asking for the
7 Court to authorize to the extent the Debtor has money to fund
8 payroll through the end of this week for employees that worked
9 during this last payroll period. To the extent the Debtor
10 doesn't have the funds, we wouldn't ask for it.

11 **THE COURT:** All right.

12 **MS. GRAY:** And, your Honor, I just want to protect
13 the record and also my client, needless to say. We did just
14 fund the request for the third week in the amount of \$75,000.
15 That was pursuant to the approved budget. I'm just not certain
16 whether this request is pursuant to the approved budget or not.
17 Now, I just need to confer with my client with regard to --

18 **THE COURT:** In other words --

19 **MS. GRAY:** -- whether he's willing to waive. If it's
20 not, that it be used --

21 **THE COURT:** -- not pursuant to our order but pursuant
22 to a budget that your client had approved is what you're --

23 **MS. GRAY:** Yes.

24 **MR. OKIN:** I don't believe it all is pursuant to the
25 budget, your Honor, just to be clear.

1 **MS. GRAY:** Yeah.

2 **THE COURT:** I can address that. What's the
3 Committee's position?

4 **MR. KHARASCH:** Your Honor, we just clarified with
5 Debtor's counsel that, you know, our only concern was -- and I
6 believe this is true -- that this would not impact the \$458,000
7 that would be funded to a Chapter 7 trustee. So there would
8 still be that availability left on the DIP line. Debtor's
9 counsel has affirmed that understanding and with that, we're
10 fine with it.

11 **THE COURT:** So I'm going to approve this and the
12 reason I'm going to approve it is maybe different than what
13 you-all are saying because I think it's a very nice thing to
14 do. I don't think I can do things just because they're nice.

15 My view is that the folks who were loyal enough to
16 stay are going to be critical for a Chapter 7 trustee to be
17 able to communicate with and that it is appropriate that those
18 folks' efforts in staying this week and doing work be
19 compensated in order to assure that the Chapter 7 trustee gets
20 their full cooperation. I believe as a matter of law, they
21 have a duty of full cooperation anyway. So I'm not saying that
22 part legally but practically trying to do the right thing by
23 these folks is going to make them more cooperative with the
24 Trustee and given that the Committee consents, I'm going to
25 leave it up to the lender to consent.

1 And let me see if I can get an order that works. Can
2 you get the -- can you talk to your client? But how quick --

3 **MS. GRAY:** Yes, your Honor. Let me step outside and
4 call him right now.

5 **THE COURT:** Okay. So I'm going to make this order --
6 I'm sorry. Mr. Cornwell?

7 **MR. CORNWELL:** I don't -- I'm sorry. I didn't want
8 to interrupt. I just wanted to tell you there's a couple
9 housekeeping matters that I'd like to discuss before the Court
10 leaves the bench. Sorry to --

11 **THE COURT:** Okay. But not to do with this issue?

12 **MR. CORNWELL:** Not to do with this, your Honor.

13 **THE COURT:** Okay. So if I make my conversion order
14 effective at 9:00 o'clock tomorrow morning and authorize these
15 payments if your client approves them at any time prior to
16 conversion, will that work? Can I get the checks cut?

17 **MR. OKIN:** Can you get them out today? They say
18 "Yes."

19 **THE COURT:** I don't know how else to do it because I
20 can't convert it and then let you spend the money. Right?

21 **MS. GRAY:** Correct.

22 **THE COURT:** I've got to let you spend the money
23 before I convert it and so -- okay.

24 **MS. GRAY:** May I be excused to go speak to
25 Mr. Holcombe?

1 **THE COURT:** Well, I'm going to make an order that you
2 won't need to talk to him about it in advance. You'll see.

3 **MS. GRAY:** Okay.

4 **THE COURT:** Just take a look at the screen.

5 **MR. OKIN:** And, your Honor, on behalf of the
6 employees, we appreciate the Court's recognition of the fact
7 that they did stay on with a lot of uncertainty to try to get
8 this through to the point they did. I think this is the
9 appropriate way to deal with it.

10 **THE COURT:** Thank you.

11 **(Pause)**

12 **THE COURT:** Let me hear objections.

13 **MR. FOXMAN:** Your Honor, Brad Foxman on behalf of
14 PIC. In Paragraph 1, instead of "existing cash on hand," if we
15 could change that to "advances under the DIP facility" just so
16 that there's not any ambiguity about the restricted cash, we
17 think that would be probably what the Court is intending there.

18 **THE COURT:** That is what I'm intending. Let me fix
19 that.

20 **MR. FOXMAN:** Thank you, your Honor.

21 **MS. GRAY:** Your Honor, assuming that the DIP lender
22 consents, we just want to be clear that he doesn't have any
23 additional funding obligation to fund things on the approved
24 budget that may not get paid because the employees are being
25 paid.

1 **THE COURT:** Is it \$415,000 exactly or --

2 **MS. GRAY:** Four hundred and fifty-eight.

3 **MR. OKIN:** Your Honor, if it helps, he's already
4 fully funded the prior obligation through the interim order.
5 There is no --

6 **THE COURT:** Where does that money --

7 **MR. OKIN:** It's in the Debtor's debtor-in-possession
8 account. That's what we're asking for permission to spend.
9 The extra funds really just amount to a couple of miscellaneous
10 items --

11 **THE COURT:** Okay.

12 **MR. OKIN:** -- some payroll savings from prior
13 periods. So it's -- but I don't think he has any remaining
14 obligation under the interim order other than the carve-out and
15 then the trustee carve-out.

16 **MS. GRAY:** I think there's been a -- kind of a
17 miscommunication among the three of us.

18 **MR. OKIN:** That money hasn't been funded, your Honor.
19 I think that may be what --

20 **THE COURT:** Wait, which hasn't been funded?

21 **MS. GRAY:** The 458 that has been reserved for the
22 Chapter 7 trustee.

23 **MR. OKIN:** Well, really --

24 **MS. GRAY:** Mr. Holcombe is obligated to fund that.

25 **THE COURT:** Oh, I thought he said it had been funded.

1 **MR. OKIN:** No, I'm sorry.

2 **THE COURT:** Okay. Let me see.

3 **MR. OKIN:** I -- to be clear, your Honor, there are
4 three, essentially, tranches of the loan as it stands right
5 now. There was three weeks of budget which was 458,000 and
6 change. Your Honor asked the DIP lender if he would agree to
7 set aside an equivalent amount as a carve-out for a --

8 **THE COURT:** Right.

9 **MR. OKIN:** Chapter 7 trustee.

10 **THE COURT:** Right.

11 **MR. OKIN:** And then there is the difference which is
12 just slightly less than 200,000 which was essentially just the
13 carve-out for professionals and uncovered administrative
14 expenses.

15 **THE COURT:** Let me try this again.

16 **MR. OKIN:** So only the first 458,000 has been
17 advanced. Everything else is still outstanding.

18 **MS. LIVINGSTONE:** Your Honor, Diane Livingstone on
19 behalf of the United States Trustee. Just to make sure my
20 Chapter 7 trustee is protected, 458 is still going?

21 **MR. OKIN:** Yes. That's the goal.

22 **MS. LIVINGSTONE:** Okay. All right, thank you.

23 **(Pause)**

24 **THE COURT:** Let's try that.

25 **MS. GRAY:** Your Honor, that is fine. It provides

1 just -- Mr. Holcombe is on the line -- that the last, I think,
2 paragraph is the one most important to him -- is that the DIP
3 lender shall not incur any liability or responsibility or have
4 any additional funding obligation as accounts of the payment
5 authorized by Paragraph 1 of the order. That's fine.

6 Now, as to Paragraph -- that upon conversion, the DIP
7 lender shall fund the 458,000, we'll need instructions with
8 regard to how to fund, where to fund and Mr. Holcombe is taking
9 his daughter to Perth on Monday -- or on Sunday and will be
10 gone all of next week. So I just want to make certain --

11 **THE COURT:** I'm not making it be instant.

12 **MS. GRAY:** Okay.

13 **THE COURT:** I just -- the trustee can give
14 instructions and the money will get funded. What I wanted to
15 be clear on, that was the essence of the deal?

16 **MS. GRAY:** Yes. And that's fine. As long as we get
17 that notice from the Chapter 7 trustee to fund, we will do so.

18 **THE COURT:** I'm saying "as directed by the trustee."
19 I'm not setting a time limit. I expect it to be reasonable and
20 if he's on an airplane, I don't think it would be reasonable to
21 expect him to fund it. If his bank account is in Perth, maybe
22 he can get it funded while he's there.

23 Does this work for the Committee?

24 **MR. KHARASCH:** Yes, your Honor.

25 **MS. GRAY:** And, your Honor, Mr. Okin did point out --

1 and I'm just going to have to go back and review the interim
2 order -- that even the Chapter 7 trustee had to present an
3 approved -- or a budget for the DIP lender's approval but I can
4 -- if you give me a minute, I can point the Court to the
5 attention. We don't mind funding it if it's still subject to
6 that provision of the interim order.

7 **THE COURT:** Does that work?

8 **MR. SPEAKER:** Yes, your Honor.

9 **THE COURT:** Essentially I want a written record that
10 makes it clear that that 458 is yet to be funded.

11 **MS. GRAY:** Yes.

12 **THE COURT:** And I think that's what's got the
13 Committee worried.

14 **MR. FOXMAN:** Your Honor, just to clean up at the end
15 of Paragraph 1, there's a "provided" that I think can come back
16 out.

17 **THE COURT:** So what I'm intending to do by Paragraph
18 1 -- we're writing this on the fly in case there's any
19 ambiguity -- is I'm authorizing the Debtor to spend the money
20 but in accordance with 363, the authorization must come from
21 the DIP lender either that has previously given or may
22 subsequently give it because that money is now cash collateral
23 of the DIP lender. So as long as there is appropriate 363
24 authorization, then the Debtor is authorized by me not to fund
25 those payroll amounts. If the DIP lender chooses not to fund

1 it, then I have not ordered the DIP lender to fund it, which I
2 don't think I have authority to do but it's now available.

3 So this is the order that was uploaded -- or handed
4 to me by Ms. Wyrick --

5 **MS. WYRICK:** Yes, your Honor.

6 **THE COURT:** -- and let's be sure that I've got the
7 right one here that others can review.

8 Any objection to that order? Okay.

9 Let me ask really the Debtor and the U.S. Trustee.
10 When do you want this conversion order entered? Because it is
11 not effective as to conversion until 9:00 in the morning, can
12 it be entered this afternoon or does it need to be entered
13 tomorrow at 9:00 in the morning? Does it matter?

14 **MS. LIVINGSTONE:** No, it does not. I mean, I can
15 start the vetting process in terms of conflict knowing that the
16 order is coming. So this afternoon is fine.

17 **MR. OKIN:** From our perspective, the sooner the
18 better, your Honor, since we --

19 **THE COURT:** Okay.

20 **MR. OKIN:** -- we're going to try to spend -- pay the
21 payroll.

22 **THE COURT:** All right. So I'm going to instruct the
23 clerk first this order gets entered.

24 So, Mr. Guajardo, I want you to enter that order
25 first and then I want you to enter this order next. Thank you.

1 Mr. Cornwell?

2 MR. CORNWELL: Thank you, Judge. Apologies for my
3 interruption. I thought you might leave the bench while we
4 conferred.

5 THE COURT: I would have tried to.

6 MR. CORNWELL: Appreciate that also. Really just
7 housekeeping. Obviously, some things have changed in the case.
8 Currently set for the 17th, next Tuesday, I believe, are the
9 two moving motions, the completion of the motion for relief
10 from stay and also the motion to compel assumption and
11 rejection. We intend to have as of an hour ago Mr. Ellis
12 reappear in person. There's no objection to any of the relief
13 on file from any of the parties.

14 Frankly, I would ask the Court to grant the relief
15 now although I appreciate maybe there's a need for a trustee to
16 review the merits of the motion. I don't know that there's
17 anything the trustee could do with the FPSO on the field and
18 it's, frankly, not going to leave the field because of all of
19 the things that the Court has heard about before. We've got to
20 offload the oil and get an order from Nigeria. So --

21 THE COURT: Well, let me ask you this. Can I
22 authorize your client to appear by telephone? He's testified
23 before us before, right? We know him. I think he can talk on
24 the phone and not have to fly over here. I don't know what I'm
25 going to hear from the Chapter 7 trustee and it really does

1 seem a shame for him to fly over here for the 7 trustee either
2 to say, no objection or to make an argument where I sustain it
3 that says he needs X more days and I think it's a shame to have
4 your client fly over. So I'm inclined to make a docket entry
5 that would authorize your client to testify by phone if
6 required.

7 Let me hear if anybody thinks that's unfairly
8 prejudicial to anyone here or to the prospective trustee?
9 Okay. Would that --

10 **MR. CORNWELL:** For the record, that --

11 **THE COURT:** -- solve part of that problem?

12 **MR. CORNWELL:** Yes, your Honor, that solves the
13 biggest part of our problem and --

14 **THE COURT:** Yeah, I really don't want him flying over
15 here for a nonsense hearing, you know.

16 **MR. CORNWELL:** Thank you for the accommodation. And
17 for the record, we've already gotten his declaration entered
18 for these two motions. It has, I think, all of his testimony
19 anyway but for cross examination purposes if it's needed --

20 **THE COURT:** We'll do it by phone.

21 **MR. CORNWELL:** -- him appearing by telephone is
22 perfectly fine with us.

23 **THE COURT:** And, again, I don't know what I'm going
24 to hear from this Chapter 7 trustee and there's probably not
25 enough time for the new Chapter 7 trustee to figure out who's

1 on first by that day.

2 **MR. CORNWELL:** Right, right.

3 **THE COURT:** Okay. What else do we need to clean up,
4 anything else?

5 **MR. CORNWELL:** That's it for us. Thank you, Judge.

6 **THE COURT:** Does anyone else have anything else?
7 Okay.

8 To Mr. Okin, to Mr. Kharasch, it's been short-lived
9 but I certainly appreciated all the hard word that the lawyers
10 did obviously in both cases totally for the benefit of their
11 constituents and the clients that you represent and it was
12 awfully well done and I know that it's a disappointment to
13 everybody to have the case end so quickly but it was a pleasure
14 having all the good and hard work done. So I thank you-all and
15 I'm sure that your constituents thank you for everything you do
16 for them.

17 I will be in adjournment until 5:00 o'clock and we'll
18 call Katz (phonetic) next. Thank you.

19 **THE CLERK:** All rise.

20 **(This proceeding adjourned at 3:10 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

July 16, 2018

TONI HUDSON, TRANSCRIBER